

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID BOGLE,

Plaintiff

v.

REGAL COLONNADE, et al.,

Defendants

Case No.: 2:22-cv-01054-APG-EJY

**Order to Show Cause Why This Action
Should Not Be Remanded for Lack of
Subject Matter Jurisdiction**

Defendants Regal Cinemas, Inc. and Regal Entertainment Group, Inc. removed this action from state court based on diversity jurisdiction. If removal is sought based on diversity of citizenship, “the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy.” 28 U.S.C. § 1446(c)(2). If the initial pleading seeks nonmonetary relief or “a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded,” then “the notice of removal may assert the amount in controversy,” but only “if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).” 28 U.S.C. § 1446(c)(2).

Federal courts are courts of limited jurisdiction. . . . It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction. . . . This burden is particularly stringent for removing defendants because the removal statute is strictly construed, and any doubt about the right of removal requires resolution in favor of remand.

Corral v. Select Portfolio Servicing, Inc., 878 F.3d 770, 773–74 (9th Cir. 2017) (internal quotations, alterations, and citations omitted). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th

1 Cir. 1992) (per curiam). Where “it is unclear what amount of damages the plaintiff has sought,”
2 as with claims governed by Nevada Rule of Civil Procedure 8(a), “then the defendant bears the
3 burden of actually proving the facts to support jurisdiction, including the jurisdictional amount.”

4 *Id.*

5 To determine the amount in controversy on removal, a court may consider the facts
6 alleged in the complaint and in the notice of removal, and may “require the parties to submit
7 summary-judgment-type evidence relevant to the amount in controversy at the time of
8 removal.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (quoting
9 *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335-36 (5th Cir. 1995)). A court also has
10 discretion to consider a plaintiff’s formal judicial admission that the amount in controversy is
11 met. *Id.* at 376.

12 In *Gaus*, the Ninth Circuit vacated the district court’s grant of summary judgment
13 because the federal court lacked subject matter jurisdiction; the Ninth Circuit remanded with
14 instructions to remand the case to the state court. 980 F.2d at 565, 567. The plaintiff had filed
15 suit in Nevada state court, seeking damages “in excess of \$10,000.” Upon removal, the
16 removing defendant alleged that “the matter in current controversy . . . exceeds the sum of
17 \$50,000.” *Id.* at 565. The Ninth Circuit found that the removing defendant “offered no facts
18 whatsoever to support the court’s exercise of jurisdiction,” and held that “[t]his allegation,
19 although attempting to recite some ‘magical incantation,’ neither overcomes the ‘strong
20 presumption’ against removal jurisdiction, nor satisfies [the removing defendant]’s burden of
21 setting forth, in the removal petition itself, the underlying facts supporting its assertion that the
22 amount in controversy exceeds \$50,000.” *Id.* at 567.

1 The complaint does not provide a basis to conclude that the amount in controversy
2 requirement is satisfied, and the removing defendants provide no evidence of the amount in
3 controversy. Although the defendants state in their removal petition that the plaintiff made a pre-
4 suit demand for the policy limit based on \$39,604.29 in past medical specials, the defendants
5 provide no evidence of the demand, the medical documentation, what the policy limit is, and
6 whether that demand is a reasonable estimate of the amount at issue in the case.

7 I THEREFORE ORDER that by July 29, 2022, the removing defendants shall show
8 cause why this action should not be remanded for lack of subject matter jurisdiction. Failure to
9 respond to this order by that date will result in remand.

10 DATED this 7th day of July, 2022.

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12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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